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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM 1969

No. 541

MISSISSIPPI-ALABAMA STATE FAIR
Petitioner

versus

MISSISSIPPI STATE TAX COMMISSION
Respondent

PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF MISSISSIPPI

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PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF MISSISSIPPI

Mississippi-Alabama State Fair, Petitioner, by and through Thomas Y. Minniece, its attorney, prays that a Writ of Certiorari issue to review the judgment of the Supreme Court of Mississippi entered in the above case on May 12, 1969.

OPINION BELOW

The opinion of the Supreme Court of Mississippi (R. 131) is reported in 222 So. 2d 664 (Adv. Sheet 1969) and is attached hereto as Appendix I.

JURISDICTION

Judgment of the Supreme Court of Mississippi was made and entered on May 12, 1969 (R. 138) and is attached hereto as Appendix II and the denial of the Petition for Rehearing was made and entered on June 2, 1969. The jurisdiction of this Court is involved under that part of 28 U. S. C. 1257 (3) reading as follows:

> "Final judgments or decrees rendered by the highest court of a State in which a decision could be had, may be reviewed by the Supreme Court as follows:
>
> . . . . .
>
> (3) By writ of certiorari, ... where any title right, privilege, or immunity is specifically set up or claimed under the Constitution, Treaties or statutes of . . . . the United States."

QUESTIONS PRESENTED FOR REVIEW

1. Whether the Supreme Court of Mississippi denied petitioner the equal protection of the law in violation of the Fourteenth Amendment to the Constitution of the United States of America by abrogating to the sole discretion of the Mississippi State Tax Commission the duty of determining the meaning and scope of the word "community fair" contained in the Amusement Tax Exemption Statute (Sec. 9083, MISS. CODE 1942, ANNOT., Supp. 1969), when no standards for the exercise of this discretion were prescribed by the statute or the court, and no uniform regu-

lations were required of said Tax Commission in exercising such discretion.

2. Whether the Supreme Court of Mississippi deprived petitioner of its property without procedural due process of law in violation of the Fourteenth Amendment of the Constitution of the United States of America by refusing to remand petitioner's case to the Mississippi State Tax Commission for a proper record of the Commission's hearing, after holding that the record in the case made by agreement of petitioner and respondent *de novo* in the Circuit Court of Lauderdale County (which agreement was approved by said Commission sitting as a full commission) was improperly made and could not be considered on appeal, and by rendering a final judgment based solely on the order of the respondent without any consideration of the rights claimed by petitioner under an exemption statute of the state.

3. Whether the Supreme Court of Mississippi denied to petitioner the equal protection of the laws in violation of the Fourteenth Amendment to the Constitution of the United States of America when it relied in its opinion on the constitutional provisions of the State of Mississippi with regard to the separation of functions between an administrative agency and the judiciary of the state, but then refused to apply those provisions to petitioner's claim to exemption under the statute, thereby discriminating against petitioner.

CONSTITUTIONAL PROVISIONS AND STATUTES INVOLVED

Questions presented by this petition involve Section 1 of the Fourteenth Amendment to the Constitution of the United States and Secs. 9057 and 9083, MISS. CODE 1942, ANNOT. (Supp. 1969) and Sec. 9074, 9075 and 9085, MISS. CODE 1942, ANNOT. (1952) attached hereto as Appendix III, subsections A, B, C, D, E, and F.

STATEMENT OF THE CASE

Petitioner, Mississippi-Alabama State Fair, was incorporated on the 31st day of December 1962 as a non-profit, non-share corporation with no dividends allowable. It was granted tax exemption under the Internal Revenue Laws of the United States (R. 33). It operates an annual fair in Meridian, Mississippi, to which it charges admission for entrance. Respondent, Mississippi State Tax Commission, levied an amusement tax against the petitioner based upon said admission charges for the years 1965-66 under authority of Sec. 9057, MISS. CODE 1942, ANNOT. (Supp. 1969). Petitioner claimed exemption as a "community fair" from said assessment under Sec. 9083, MISS CODE 1942, ANNOT. (Supp. 1969). A hearing was set before the respondent siting as a full commission as authorized by Sec. 9074 of the MISS. CODE 1942, ANNOT. (1952). On the day of the hearing an official reporter was not made available by respondent to make the transcript of the testimony the Supreme Court of Mississippi now says was required by Sec. 9075, MISS. CODE 1942, ANNOT. (1952). Pursuant to an agreement between petitioner and respondent that if either desired to appeal to the Circuit Court, a trial *de novo* would be had at that forum, petitioner waived the statutory requirement that respondent make a transcript. This procedure was approved by the full commission which was authorized by Sec. 9085 of the MISS. CODE 1942 (1952) to prescribe rules for the ascertainment of the taxes imposed (R. 5). An order was handed down by respondent (R. 6) commission holding that petitioner did not come within the meaning of the language of the exemption statute, Section 9083, MISS. CODE 1942, ANNOT. (Supp. 1969), and requiring the payment of back amusement taxes along with penalties and interest. Petitioner, feeling aggrieved at the respondent's order, perfected its appeal to the Circuit Court of Lauderdale County, wherein, in accordance with the

agreed stipulation a trial *de novo* was had. At the conclusion of the hearing the Circuit Court entered a judgment holding that the petitioner did come within the language contained in the exemption statute and reversed the order of respondent (R. 126). The respondent then perfected its appeal to the Supreme Court of Mississippi, which refused to give its interpretation of the exemption, but handed down its opinion on May 12, 1969, holding that the *de novo* hearing before the Circuit Court was in violation of the law of the State of Mississippi with reference to its administrative agencies and, therefore, the evidence at said court hearing could not be considered. It rendered a judgment based solely on the order of respondent. It held further that respondent had the discretionary power to decide the "legal question" of whether petitioner had any rights under the exemption statute. Petioner made a timely petition for a rehearing (R. 139) according to the rules of the Supreme Court of Mississippi, which petition was denied on June 2, 1969. Petitioner now asks this Honorable Court to issue a Writ of Certiorari to review the actions of the Supreme Court of Mississippi.

STAGE AT WHICH QUESTIONS PRESENTED IN PETITION WERE BROUGHT TO THE ATTENTION OF STATE SUPREME COURT

Since petitioner had not been deprived of any United States Constitutional guarantees complained of herein until the opinion and judgment thereon by the Supreme Court of Mississippi, the questions presented by this petition were first put before that Honorable Court in the form of a petition for rehearing, attached hereto as Appendix V, which was denied on June 2, 1969.

REASONS FOR ALLOWANCE OF WRIT

Petitioner would show unto this Honorable Court that if the opinion of the Supreme Court and the judgment thereon is not now taken under review, your petitioner, as well as the rest of the people of Mississippi, will be deprived of due process in the area of administrative law, will be subject to administrative abuse, and your petitioner will be deprived of equal protection of the laws for the following reasons:

1. A very serious question about the future of due process in the field of administrative law and procedure in Mississippi is presented by the effect of the opinion in the case, review of which is sought herein. In refusing to meet the question of statutory construction presented to them by this case and in abrogating that responsibility to the administrative agency without restriction, the Supreme Court has done what the legislature could not do, confer inherent judicial powers on an administrative body. *Covert v. State Board of Equalization,* 162 P. 2d 717 (Cal. 1945). This error is compounded by the fact that there exists no legislative authority for the Mississippi State Tax Commission to interpret the statute and there exist no rules, regulations or standards, legislative or otherwise, to guide the respondent in its interpretation of the exemption statute. No evidence was presented by respondent at the hearing before the Circuit Court of Lauderdale County (R. 122). They sought guidance from the court as to the interpretation of the statute to which they should apply the facts concerning particular fairs. Because of the opinion of the Supreme Court of Mississippi, they will now need no standards or guidelines to decide who is to be exempted from amusement taxes. If it pleases them that the politically powerful Neshoba County Fair escape taxation (R. 77-78) while petitioner bears such a burden, there exists no standard to hold them up against. It is to be recognized that fairs both historically and at the present time are important

dissimulators of information, places of assembly and centers of free speech. This Court and other courts have frequently held that such vagueness of administrative standards and latitute of discretion is violative of due process. *Saia v. New York*, 334 U. S. 558, 92 L. Ed. 1574; *Cantwell v. Connecticut*, 310 U. S. 296, 84 L. Ed. 1213, 60 S. Ct. 900; *Kelly v. Metropolitan Bd. of Ed. of Nashville, Tenn.* 293 F. Supp. 485 (Tenn. 1968).

2. The failure of the Supreme Court to remand the case to the Tax Commission for a proper hearing with the official reporter they said was required was a blatant denial of due process. Sec. 9075, MISS. CODE 1942, ANNOT. (1952) requires that the respondent provide for the making of a transcript. Sec. 9085, MISS. CODE 1942, ANNOT. (1952) charges the commission with responsibility for setting rules of procedure for the ascertainment of tax liability. When the Supreme Court of Mississippi declared that the record made in the Circuit Court was a nullity, it rendered the order of the Tax Commission in violation of Sec. 9075, supra, also a nullity. To then render a judgment based solely on the illegal order of respondent is a very basic denial of due process. As it is truly said, the evidence of due process before an administrative agency resides in its record. *Garvey v. Freeman*, 397 F. 2d 600 (1968). It is manifestly unfair that the Mississippi State Tax Commission should gain advantage from its illegal act in failing to provide an official reporter.

The Supreme Court of Mississippi erred further in holding that the record made *de novo* before the Circuit Court was null and void and could not be considered on any appeal from that court because, even admitting that the laws of Mississippi do not allow *de novo* hearings on factual issues already presented to an administrative agency, the primary question presented by the appeal was judicial, not administrative, in nature. The question was whether the Mississippi-

Alabama State Fair came within the definition or intent of the exemptions provided by the laws of Mississippi. This was a question of statutory construciton which is the primary responsibility of the judiciary. The Circuit Court had the power and the duty to hear evidence to aid it in determining the proper statutory construction.

3. The opinion of the Supreme Court of Mississippi presents the anomaly of recognizing the very principles argued herein at the same time as they refuse to apply said principles to petitioner. The court cites the case of *Loftin v. George County Board of Education,* 183 So. 2d 621 (Miss. 1966) as holding the scope of judicial review over administrative agencies as recognized in the State of Mississippi to be limited to the determination of whether the order (1) was supported by substantial evidence, (2) was arbitrary or capricious, (3) was beyond the power of the board to make, or (4) *violated some statutory or constitutional right of the complaining party.* (Emphasis supplied) (R. 136). Recognizing this to be the law, the opinion, however, says that such questions as set out in (4) above are legal questions for the presentation to the respondent (R. 131) and in a footnote (R. 137) relegates the review of the court in this case over the respondent's determination of such statutory rights to areas of review (1) and (2) above. It is submitted that this anomaly has produced discrimination against your petitioner and has denied it equal protection of the law.

CONCLUSION

The State of Mississippi has no general administrative procedural act.

The disposition of petitioner's case by the Supreme Court of Mississippi has denied petitioner procedural due process, deprived it the equal protection of the law, and has created a

trend in Mississippi administrative law which was warned against by this Honorable Court in *United States v. Northern P. Ry. Co.*, 242 U. S. 190, 61 L. Ed. 240 (1916) as follows:

> "Statutes should be construed as far as possible so that those subject to their control may, by reference to their terms, ascertain the measure of their duty and obligation rather than that such a measure should be dependent upon the discretion of executive officers to the end that ours may continue to be a government of written laws rather than one of official grace." 242 U. S. at 195; 61 L. Ed. at 243.

Petitioner is presented with the problem of how it should qualify for the exemption from the amusement tax provided by the laws of Mississippi without a standard to go by and at the mercy of the unlimited discretion of the politically appointed Mississippi State Tax Commission. This Honorable Court has again and again struck down laws and opinions which require such vague standards of and established such unlimited discretion in governmental agencies as being condusive to arbitrary and discriminatory practices. Petitioner respectfully submits that such a situation is presented by the action of the Supreme Court of Mississippi complained of herein.

Respectfully submitted,
MISSISSIPPI-ALABAMA STATE FAIR

By Thomas Y. Minniece
Thomas Y. Minniece

MINNIECE, NEVILLE & HAMILL
POST OFFICE BOX 1563
MERIDIAN, MISSISSIPPI 39301

Attorney for Petitioner

CERTIFICATE

I, the undersigned Thomas Y. Minniece, attorney of record for petitioner herein, do hereby certify that I have served a copy of the foregoing Petition for Writ of Certiorari to the Supreme Court of Mississippi on Mississippi State Tax Commission, respondent thereto, by mailing a true and correct copy thereof to Hon. Taylor Carlisle, attorney of record for said Mississippi State Tax Commission, first class postage prepaid, to his post office address, P. O. Box 968, Jackson, Mississippi 39205, this the 29th day of August, 1969.

Thomas Y. Minniece

Thomas Y. Minniece
MINNIECE, NEVILLE & HAMILL, ATTORNEYS
POST OFFICE BOX 1563
MERIDIAN, MISSISSIPPI 39301

APPENDIX I

MISSISSIPPI STATE TAX COMMISSION

v.

MISSISSIPPI-ALABAMA STATE FAIR

No. 45347

Supreme Court of Mississippi

May 12, 1969

Rehearing Denied June 2, 1969

RODGERS, Justice:

The legal question presented to the Tax Commission in this case was whether or not the Mississippi-Alabama State Fair, Inc. was a "private fair" or a "county, State or community fair" within the meaning of section 9083, Mississippi Code 1942 Annotated (Supp. 1968). The Mississippi State Tax Commission contends on appeal that the fair is a "private fair" and not such a "community fair" as is exempt from taxation under the foregoing Code section.

The appellee, Mississippi-Alabama State Fair, hereafter referred to as the Fair, was incorporated on the 31st day of December 1962 as a non-profit, non-share corporation with no dividends allowable. The corporation had three officers: A. Lloyd Royal, Sr., President; A. Lloyd Royal, Jr., Vice President; and Mrs. Ann B. Royal, Secretary-Treasurer. Since its incorporation the Fair has operated an annual fair in Meridian, Mississippi. It charges an admission for entrance to the fair. The Mississippi State Tax Commission levied an amusement privilege license tax assessment against the Fair based upon the admission charges for the year 1965-66, under

authority of section 9057, Mississippi Code 1942 Annotated (Supp. 1968), at the rate of 1c for each 10c collected as admission charges.

The Mississippi State Tax Commission (hereafter called Tax Commission) and the Fair entered into a stipulation at the hearing before the Tax Commission that the statutory requirement of a transcript of the testimony of the hearing before the Commission was thereby waived, and it was agreed that if an appeal were taken by either party, from the action of the Commission under sections 9075 and 9080, Mississippi Code 1942 Annotated (1952), to the Circuit Court, the trial on appeal would be de novo in the Circuit Court.

Thereafter, the Tax Commission heard the testimony presented before it and entered an order determining that the Mississippi-Alabama State Fair was not such a "county, State or community fair" as is permitted to be exempt from taxation under authority of section 9083, Mississippi Code 1942) Annotated (Supp. 1968). The Fair appealed to the Circuit Court of Lauderdale County, Mississippi, where the case was tried anew pursuant to the agreement to try the case "de novo." Evidence was introduced before the Circuit Judge, who considered the evidence and entered an order deciding the issue on the weight of the evidence introduced in the Circuit Court.

When the record on appeal reached this Court and it was discovered that the case had been retried in the Circuit Court on the issue presented to the Tax Commission, this Court required briefs on the question of the de novo hearing by agreement in the Circuit Court on appeal from an administrative agency. The Tax Commission and the Fair filed their briefs in compliance with this request. Both parties, however, agreed in their briefs that jurisdiction to hear an appeal to the Circuit Court from an administrative order could be

had de novo in the Circuit Court on evidence offered in that Court. This conclusion is incorrect.

Section 9075, Mississippi Code 1942 Annotated (1952), provides the method of an appeal from a decision of the Tax Commission on the revocation of permits, and this section is made applicable to the issue involved here by section 9080 of the Code. The pertinent parts of section 9075 are as follows:

> "* * * the person aggrieved may * * * appeal to the Circuit Court of the county where such place of amusement was conducted; such appeal shall be taken in the form of objections and exceptions to the order of the Commission, which shall be accompanied by the records of the Commission, and a *transcript of the testimony* before said Commission, in the case, which shall constitute the record in the circuit court * *." (Emphasis added)

Our Constitution does not permit the judiciary of this state to retry de novo matters on appeal from administrative agencies. Our courts are not permitted to make administrative decisions and perform the functions of an administrative agency. Administrative agencies must perform the functions required of them by law. When an administrative agency has performed its function, and has made the determination and entered the order required of it, the parties may then appeal to the judicial tribunal designated to hear the appeal. The appeal is a limited one, however, since the courts cannot enter the field of the administrative agency. The court will entertain the appeal to determine whether or not the order of the administrative agency (1) was supported by substantial evidence, (2) was arbitrary or capricious, (3) was beyond the power of the administrative agency to make, or (4) violated some statutory or constitutional right of the complaining party. This rule has been thoroughly settled in this state.

See Loftin v. George County Board of Education, 183 So.2d 621 (Miss. 1966); City of Meridian v. Davidson, 211 Miss. 683, 53 So.2d 48 (1951); California Co. v. State Oil & Gas Board, 200 Miss. 824, 27 So.2d 542 (1946), suggestion of error overruled, 200 Miss. 824, 847, 28 So.2d 120 (1946).

We are cognizant of our holding in the cases cited under section 1196, Mississippi Code 1942 Annotated (1956) (Hemingway's Code 1927 § 61), such as Stuart v. Board of Supervisors, 195 Miss. 1, 11 So.2d 212 (1943), and Knox v. L. N. Dantzler Lumber Company, 148 Miss. 834, 114 So. 873 (1927), in which this Court said that the appeal from the agencies therein mentioned to the Circuit Court would entitle the appellant to a new trial or trial de novo in the Circuit Court, on the merits. Board of Supervisors of Jones County v. Laurel Mills, 130 Miss. 454, 94 So. 448 (1922). These cases are not in point here for two reasons: (1) The appeal in the instant case is under an entirely different section of the Code; and (2) the appeal proceedings under section 1196, Mississippi Code 1942 Annotated (1956) are said to be judicial rather than administrative. (Hattiesburg v. First National Bank, 8 F.Supp. 157 (S.D.Miss.1934).) Moreover, this Court has not had an opportunity to reevaluate the holdings in these cases in the light of modern administrative law.

Many years ago (1913), this Court began to recognize the constitutional limitation surrounding an appeal from an administrative agency to the judiciary of this state. The Court pointed out that an appeal made directly to the Supreme Court of Mississippi was invalid, and that an appeal to the Circuit Court from an administrative agency was limited to determining "reasonableness" and "lawfulness" of the order of the administrative agency. See Illinois Central R.R. v. Dodd, 105 Miss. 23, 61 So. 743, 49 L.R.A.,N.S. 565 (1913).

In the case of City of Meridian v. Davidson, *supra*, this

Court cited the case of California Company v. State Oil & Gas Board, *supra*, and in discussing the right of an appellant to a de novo hearing in the Circuit Court under the authority of a legislative act, this Court said:

> "Such a trial is beyond the constitutional power of the Legislature to order where there is to be reviewed in the circuit court the action of a commission in the exercise of a purely executive or administrative function. In order that we may uphold the constitutionality of the Act in question, it is essential that the circuit court be limited, as was done by the express language of the Act, to the judicial function of determining whether or not the judgment of the commission had such a basis in substantial evidence as not to affirmatively show that the commission had acted in bad faith or without cause, and on which issue the employee carried the burden of appellant to the circuit court." 211 Miss. at 692-693, 53 So.2d at 52.

In the case of Loftin v. George County Board of Education, 183 So.2d 621 (Miss. 1966), we again pointed out that the powers of government under our Constitution are divided into three distinct departments, and that persons acting or belonging to one of such departments is prevented from exercising power in any other department. We said:

> "The scope of review by the courts of the orders of administrative agencies performing executive or legislative functions of government is a limited one. In reviewing the order of a county board of education upon appeal to the circuit court, the power of the court is limited to determining whether the order (1) was supported by substantial evidence, (2) was arbitrary or capricious; (3) was beyond the power of the board to make; or (4) violated some statutory or constitutional right of the complaining party." 183 So.2d at 622-23.

We are therefore confronted with the question. Can the administrative agency, the Tax Commission, and a taxpayer, in a hearing before the Commission, do that which the Legislature has no power to do and has not done, that is to say, by an agreement confer jurisdiction upon the circuit court to retry, de novo, the issue of the assessment and collection of taxes required to be determined by the Tax Commission? The answer to that query is, of course, in the negative.

The method of appeal to the circuit court is clearly expressed in section 9075, Mississippi Code 1942 Annotated (1952), above quoted. Upon appeal to the circuit court, it is the function of the court to determine whether or not the Commission had the authority to do what it did, under the law, and whether or not it acted lawfully in performing its administrative function in accord with the rules.

In the instant case there is no "transcript of the testimony before said Commission," and since we may not consider the evidence given in a de novo hearing, the only record we have which has been properly appealed to this Court is the order of the Tax Commission denying the claim of the taxpayer to an exemption under the amusement tax assessment. The judgment of the Circuit Court on the de novo hearing must therefore be set aside and judgment entered here affirming the order of the Tax Commission.[1]

The judgment of the Circuit Court is hereby reversed, and the order of the Mississippi State Tax Commission levying

1. Out of an abundance of caution, however—and in view of the statement in both briefs that the testimony in the Circuit Court was in effect the same as that had before the Tax Commission—we have examined the entire transcribed record, and we are convinced that the Tax Commission acted properly in making the assessment. We are convinced that the taxpayer, Mississippi-Alabama State Fair, is not entitled to the exemption claimed under the authority of section 9083, Mississippi Code 1942 Annotated (Supp. 1968).

an amusement privilege tax based upon admissions collected by the Mississippi-Alabama State Fair be and it is hereby reinstated and affirmed.

Judgment of Circuit Court of Lauderdale County Reversed; order of the Mississippi State Tax Commission reinstated and affirmed.

ETHRIDGE, C. J., and JONES, SMITH and ROBERTSON, JJ., concur.

APPENDIX II

Monday, May 12, 1969

MISSISSIPPI STATE TAX COMMISSION

45,347

MISS-ALA STATE FAIR

This cause having been submitted at a former day of this Term on the record herein from the Circuit Court of Lauderdale County and this Court having sufficiently examined and considered the same and being of the opinion that there is error therein doth order and adjudge that the judgment of said Circuit Court rendered in this cause on the 19th day of June 1968 be and the same is hereby reversed; the order of the Mississippi State Tax Commission reinstated and the cause affirmed. It is further ordered and adjudged that the appellant do have and recover of and from the appellee all of the costs of this Court and in the Court below to be taxed, for which let proper process issue.

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APPENDIX III

A

AMENDMENT 14

Section 1.—All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

B

§ 9057. Tax levied—There is hereby imposed, levied and assessed, to be collected and paid as hereinafter provided, a privilege license tax of One Cent (1c) for each Ten Cents (10c) or fractional part thereof received as admission to any amusements as hereinbefore defined, upon every person conducting such amusement or place where such amusement is conducted, whether such amusement is held or conducted in a public or private building, hotel, tent, pavilion, lot, or resort inclosed or in the open; and the tax shall be computed upon each such admission charged, donation or contribution except as herein otherwise provided.

Provided, however, that in lieu of the above rate on admissions to moving picture shows, swimming pools, aquariums wherein are displayed aquatic life, and permanent tourist attractions of an educational or historic nature, including permanent wild life exhibits there is hereby imposed, levied and assessed, to be collected as hereinafter provided, a tax of three per cent (3%) as an amusement tax on each

dollar of gross revenue derived from sale of admission to any moving picture, swimming pool, aquarium or permanent tourist attraction of an educational or historic nature, including permanent wild life exhibits, wherein are displayed aquatic life or wild life and educational or historical portrayals or events, or upon every person conducting a moving picture show or place where a moving picture show is conducted whether such moving picture show be shown in a public or private building, hotel, tent, lot or resort inclosed or in the open; and the tax so imposed shall be computed solely upon each dollar of gross revenue charged as admission, donation or contribution. Tickets to or for baseball games between teams operating under professional league franchises are exempt from the provisions of this act, and tickets of admission to organized garden pilgrimages and admission to ante bellum and historic houses when sponsored by an organized civic or garden club are likewise exempt from the provisions of this act.

C

§ 9083. Exemptions—No tax shall be levied or collected upon any admissions charged at any place of amusement operated solely for the benefit of any religious or charitable organization where the proceeds of such admissions do not inure to any one or more individuals; nor shall such tax apply to admissions charged at any athletic games or contests between high schools or grammar schools; nor to admissions to county, state or community fairs, or entertainments presented in community homes or houses which are publicly owned and controlled, and the proceeds of which do not inure to any individual or individuals. The exemptions allowed in this section shall not apply to athletic games or contests between universities or colleges, nor to amusement in which professional performers or promoters are employed, or compensated out of the proceeds of such admissions received, pro-

vided, however, that no tax shall be levied or collected upon any admissions charged for the performance or symphony orchestras, operas, vocal or instrumental artists in which professional or amateur performers are compensated out of the proceeds of such admissions, when sponsored by local music or charity associations, or amateur dramatic performances or professional dramatic productions when sponsored by a children's dramatic association, where no dividends are declared, profits received, nor any salary or compensation paid to any of the members of such associations, or to any person for procuring or producing such performance.

D

§ 9074. Notice of revocation of permit.—When any permit is revoked, the Commission shall send by registered mail to the person holding same, formal written notice of such revocation, and such person shall have the right at any time within ten days from the date of mailing of such notice, to appeal to the commission praying for a review and revision of such revocation upon such grounds as the taxpayer may deem proper to base such appeal; and upon the filing of such appeal, the Commission shall promptly fix a date for the hearing thereof, as soon as practicable, and shall notify all parties in writing of the time and place of such hearing.

E

§ 9075. Right of appeal.—If upon such hearing the Commission shall decline to rescind its act of revocation of the permit, the person aggrieved may, within ten days of the date of such hearing appeal to the circuit court of the county where such place of amusement was conducted; such appeal shall be taken in the form of objections and exceptions to the order of the Commission, which shall be accompanied by the records of the Commission, and a transcript of the testimony

before said Commission, in the case, which shall constitute the record in the circuit court. The appeal shall be granted by the Commission upon the filing of a bond by the appellant, with sufficient sureties in a penal sum sufficient to cover all taxes and penalties in arrears, and all taxes to accrue pending a final hearing, and all costs; and the circuit judge shall hear the appeal in vacation on written demand of the party appealing, after the said party shall have given five days notice in writing to all parties concerned.

§ 9085. State Tax Commission to administer.— The administration of this Act is hereby vested in the State Tax Commission, which shall from time to time promulgate such reasonable rules and regulations not inconsistent with this Act for making returns and for the ascertainment, assessment and collection of the taxes imposed hereunder, and in the enforcement of this Act the said Tax Commission may act through and by its duly authorized agents.

In cases of violation of this Act which are not flagrant, the Tax Commission may, in its discretion, remit any penalties imposed by it under the provisons of this Act.

APPENDIX IV

A (R. 33)

PERTINENT PORTIONS OF THE RECORD REFERRED TO IN THE PETITION

BY MR. MININECE:

Q Now, Mr. Royal, have you applied, in connection with your income tax and other taxes that might be due the Federal Government, have you applied to the Federal Government Internal Revenue Service for an exemption for the Mississippi-Alabama State Fair?

A Yes, sir.

Q And have you received that exemption?

A Yes, sir.

Q What is this I hand you?

A This is from the U. S. Treasury Department stating that the Mississippi-Alabama State Fair has been granted exemption from income, excise tax, and is signed by J. G. Martin, Jr., District Director in Jackson, Mississippi. An extensive application was sent in and certified.

B (R. 5)

STATE OF MISSISSIPPI
COUNTY OF HINDS

OFFICE
STATE TAX COMMISSION

IN THE MATTER OF THE AMUSEMENT PRIVILEGE LICENSE TAX ASSESSMENTS MADE AGAINST MISSISSIPPI-ALABAMA STATE FAIR FOR THE YEARS 1965 AND 1966 IN THE AMOUNT OF $4,356.72 PLUS PENALTIES IN THE AMOUNT OF $435.67, MAKING A TOTAL OF $4,792.39

STIPULATION

On the 18th day of April, 1967, prior to the hearing by the State Tax Commission of the subject protest and appeal it was agreed to and stipulated by counsel for the parties in the presence of the Commission that the requirement of a transcript of the testimony of the hearing before the Commission was waived in which the Commission concurred and that if an appeal was taken by either party from the action of the Commission under Sections 9075 and 9080, Mississippi Code of 1942 (Annotated) to the Circuit Court the trial on appeal would be de novo in the Circuit Court.

/s/ Taylor Carlisle

/s/ James E. Williams
Attorneys for State Tax Commission

FILED

OCTOBER 12, 1967

PRESTON P. COLEMAN
CIRCUIT CLERK

/s/ Thomas Y. Minniece
Thomas Y. Minniece, Attorney for Mississippi-Alabama State Fair

C (R. 6-8)

STATE OF MISSISSIPPI }
COUNTY OF HINDS } OFFICE
STATE TAX COMMISSION

SEPTEMBER 26, 1967

BE IT REMEMBERED THAT on the date stated above the State Tax Commission of said state adopted an order in words and figures as follows, to-wit:

IN THE MATTER OF THE AMUSEMENT PRIVILEGE LICENSE TAX ASSESSMENTS MADE AGAINST MISSISSIPPI-ALABAMA STATE FAIR FOR THE YEARS 1965 AND 1966 IN THE AMOUNT OF $4,356.72 PLUS PENALTIES IN THE AMOUNT OF $435.67, MAKING A TOTAL OF $4,792.39

ORDER

This day this cause came on for decision and it appearing unto the State Tax Commission that on the 18th day of April, 1967, the Commission held a hearing on the protest and appeal from the amusement privilege license tax assessments and penalties made against Mississippi-Alabama State Fair for the years 1965 and 1966 in the following amounts:

Year	Tax	Penalty	Total
1965	$2,064.17	$206.42	$2,270.59
1966	2,292.55	$229.25	$2,521.80
		Total	$4,792.39

and the taxpayer, Mississippi-Alabama State Fair was represented at said hearing by Honorable Thomas Y. Minniece, attorney, P. O. Box 2009, Meridian, Mississippi; Honorable Rex X. Jones, Attorney, P. O. Box 125, Hattiesburg, Missis-

sippi; Mr. A. L. Royal, Sr., President, Mississippi-Alabama State Fair, Meridian, Mississippi, and Mr. Henry E. Jackson, P. O. Box 549, Hattiesburg, Mississippi, and the State Tax Commission was represented by Mr. J. T. Sherman, Chief Amusement Tax Division; Mr. M. B. Denny, Assistant Chief Amusement Tax Division; Mr. K. V. Jordan, auditor Meridian District Office; Mr. Taylor Carlisle, attorney and Mr. James E. Williams, Assistant Attorney, and at said hearing this cause was taken under advisement for decision at a later date, and the Commission, after due consideration of all the testimony and exhibits introduced at the hearing of April 18, 1967, and other information furnished by said corporation to the Commission since said hearing, is now of the opinion and finds that the Mississippi-Alabama State fair during the years 1965 and 1966 was not a county, state or community fair and did not present entertainments in a community home or house which was publicly owned and controlled, and the Commission further finds that a part of the proceeds from said fair inured to individuals instead of to the Mississippi-Alabama State Fair, a corporation, and the Commission further finds that the Mississippi-Alabama State Fair, as a corporation, is not a nonprofit noshare corporation in truth and in fact, because it has the right to acquire real and personal property, to lease, sell, exchange and dispose of in any manner real and personal property and to pay wages, salaries, expenses, pay bonuses and award prizes, and that upon dissolution of the corporation all of its real and personal estate shall be vested in the members therein.

The Commission is, therefore, of the opinion and further finds that the amusement privilege license tax assessments plus penalties made against Mississippi-Alabama State Fair for the years 1965 and 1966 in the following amounts should be affirmed:

D (R. 126-127)

IN THE CIRCUIT COURT OF
LAUDERDALE COUNTY, MISSISSIPPI

MISSISSIPPI-ALABAMA STATE FAIR

VS. NO. 8926

STATE TAX COMMISSION

JUDGEMENT

This day this cause coming on to be heard in open court on appeal of Mississippi-Alabama State Fair, appellant herein, from that certain order of the State Tax Commission, dated September 26, 1967, levying privilege license tax assessments and penalties in the sum of $4,792.39 on appellant, Mississippi-Alabama State Fair, and stipulation between said appellant and appellee to try this cause de novo in this court and other pleadings herein: and the court having heard evidence and argument of counsel, finds that the appellant, Mississippi-Alabama State Fair, was, during the period for which such assessments were made, a community fair operated by a non-profit corporation and that none of the proceeds inured to any individual or individuals and, therefore, appellant was exempt from such tax under the provisions of the laws of Mississippi and, therefore, the said order of the State Tax Commission should be reversed and set aside.

IT IS, THEREFORE, ORDERED AND ADJUDGED that the order of the State Tax Commission entered herein on September 26, 1967 be and it hereby is set aside and held for naught, the appellant herein is released from the obligation of the bond filed herein together with his bondsmen, and the

clerk of this court is directed to certify a copy of this order to the appellee, State Tax Commission as provided by statute.

IT IS FURTHER ORDERED that the appellee herein, Mississippi State Tax Commission, pay all costs herein incurred in this court.

ORDERED AND ADJUDGED THIS the 19th day of June, 1968.

/s/ Lester F. Williamson
Circuit Judge

FILED
JUNE 19, 1968
RAYMOND P. DAVIS
CIRCUIT CLERK

E (R. 122)

BY THE COURT:

What says the appellee?

BY MR. CARLISLE:

We have no testimony, your Honor. Pardon me, I do want - I think we had an agreement. I do want to make the order of the Commission, I believe though it was designated, was it not, as an exhibit?

APPENDIX V

IN THE SUPREME COURT OF THE STATE OF MISSISSIPPI

MISSISSIPPI STATE TAX COMMISSION APPELLANT
V. NO. 45,347
MISSISSIPPI-ALABAMA STATE FAIR APPELLEE

PETITION FOR REHEARING

Comes now Mississippi-Alabama State Fair and files this its petition for a rehearing herein and reconsideration by this court of its decision and opinion rendered on May 12, 1969, and sets forth the following grounds therefor:

1. In laying down the general rule with reference to trials de novo in appeals from decisions of administrative bodies in this state, the court has overlooked the fact that the finding of the Tax Commission in the case at bar was not an exercise of either the legislative or executive functions of the State Tax Commission, but was the interpretation of a legislative statute which is manifestly a judicial function.

2. In reversing this case because no record was made of the testimony before the Tax Commission and failing to remand for a new hearing at which such a record can be made, the court has denied to the Appellee procedural due process of law in violation of its rights under the constitutions of the United States and of the State of Mississippi.

3. In referring to the merits of this case only in a footnote, the court has failed to give any guidance to either the State

Tax Commission or the numerous county, state and community fairs concerning the meaning of the statute in question.

Respectfully submitted,

MISSISSIPPI-ALABAMA STATE FAIR
APPELLEE

By _____
Thomas Y. Minniece, Attorney

SUPREME COURT, U. S.

FILED

OCT 1 1969

JOHN F. DAVIS, CLERK

NO. 541

IN THE SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1969

MISSISSIPPI-ALABAMA STATE FAIR ..... Petitioner

VS.

MISSISSIPPI STATE TAX COMMISSION ..... Respondent

ON PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF MISSISSIPPI

BRIEF FOR RESPONDENT IN OPPOSITION

JOHN E. STONE
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Jackson, Mississippi
Attorney for Respondent

Of counsel:

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JAMES E. WILLIAMS
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Jackson, Mississippi

IN THE SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1969

NO. 541

MISSISSIPPI-ALABAMA STATE FAIR ....Petitioner

VS.

MISSISSIPPI STATE TAX COMMISSION .....Respondent

ON PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF MISSISSIPPI

BRIEF FOR RESPONDENT IN OPPOSITION

Mississippi State Tax Commission, Respondent, by and through John E. Stone, its attorney, files this brief in opposition to the Petition for Writ of Certiorari to the Supreme Court of the State of Mississippi, and Respondent prays that the said Petition will be dismissed by this Court.

OPINION BELOW

The opinion of the Supreme Court of Mississippi rendered in this cause is reported at 222 So. 2d 664 (Miss.), and is set forth in its entirety as Appendix I to the Petition for Writ of Certiorari filed herein.

JURISDICTION

The facts set forth in the Petition for Writ of Certiorari filed in this cause are inadequate to vest jurisdiction in this Court under 28 U.S.C. 1257 (3). Petitioner

does not qualify for a review on writ of certiorari under Supreme Court Rule 19(a).

QUESTION PRESENTED

The question presented in this cause is whether the decision of the Mississippi Supreme Court denied to petitioner equal protection of law and due process of law in violation of the Fourteenth Amendment to the Constitution of the United States.

STATUTES INVOLVED

There are three statutes which must be considered in order to understand the opinion of the Supreme Court of Mississippi in the present cause:

1) Section 9088, Mississippi Code of 1942 (Appendix A to this Brief), the pertinent part of which states that "No tax shall be levied or collected upon . . . admissions to county, state or community fairs. . ."

2) Section 9080, Mississippi Code of 1942 (Appendix B to this Brief), the pertinent part of which states that "The taxpayer shall have the right of appeal from such assessment as in cases of revocation of permit."

3) Section 9075, Mississippi Code of 1942 (Appendix C to this Brief), the pertinent part of which states that ". . . such appeal shall be taken in the form of objections and exceptions to the order of the Commission, which shall be accompanied by the records of the Commission, and a transcript of the testimony before said Commission, in the case, which shall constitute the record in the circuit court."

STATEMENT OF THE CASE

Respondent assessed an amusement tax against petitioner, based upon petitioner's operation of a fair dur-

ing the years 1965 and 1966. Petitioner appealed the assessment, claiming an exemption as a "community fair" under Section 9082, Mississippi Code of 1942. By agreement between the parties (R. 5), no transcript was made of the hearing held before the Mississippi State Tax Commission. An order was entered by the Commission affirming the assessment (R. 6), and petitioner appealed to the circuit court. Pursuant to the aforesaid agreement, a trial *de novo* was held in circuit court, a transcript was made, and judgment was entered reversing the Commission order (R. 126). Respondent appealed to the Mississippi Supreme Court, whereupon the Commission order was reinstated and affirmed.

ARGUMENT

In respect to the construction of state statutes, a state court's interpretation is nonreviewable by the United States Supreme Court. The decision of the Mississippi Supreme Court in the case of *Mississippi State Tax Commission v. Mississippi-Alabama State Fair,* 222 So. 2d 664, decided two points of Mississippi law:

1) Section 9075, Mississippi Code of 1942 (Appendix C to the Brief) does not allow the litigants, by agreement, to confer jurisdiction upon the circuit Court to try a cause *de novo;* and

2) The Mississippi-Alabama State Fair is not entitled to an exemption under Section 9083, Mississippi Code of 1942 (Appendix A to the Brief).

Respondent recognizes that its agreement with petitioner to a trial *de novo* in circuit court has confused an otherwise simple question of whether or not petitioner is a community fair. However, in view of the plain provisions of Section 9075, Mississippi Code of 1942,

it was not a denial of any rights of petitioner for the Mississippi Supreme Court to find that the parties had no power to confer jurisdiction upon the circuit court to try the cause anew.

Petitioner's argument that the Mississippi Supreme Court failed to properly review the Order of the Mississippi State Tax Commission is without merit. The opinion rendered by the Mississippi Supreme Court clearly shows that the Order of the Commission was reviewed by the Court in the light of the facts presented before the Commission. See *Mississippi State Tax Commission vs. Mississippi-Alabama State Fair,* 222 So. 2d 664, 667, wherein it is stated:

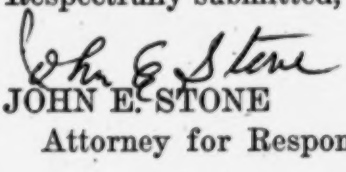
> "1. Out of an abundance of caution, however-and in view of the statements in both briefs that the testimony in the Circuit Court was in effect the same as that had before the Commission — we have examined the entire transcribed record, and we are convinced that the Tax Commission acted properly in making the assessment. We are convinced that the taxpayer, Mississippi-Alabama State Fair, is not entitled to the exemption claimed under the authority of Section 9083, Mississippi Code of 1942 Annotated (Supp. 1969)."

Petitioner's argument that a question of the future of due process in the field of administrative law and procedure in Mississippi is presented by the effect of the opinion in this cause is incorrect. In the recent case of *Tenneco, Inc., v. Barr,* 224 So. 2d 208, the Mississippi Supreme Court pointed out that there are various methods of appeal from orders of the State Tax Commission, but in all cases, the appeal is based upon the statutory provision granting the said appeal.

CONCLUSION

Petitioner is asking this Court to order a remand of the cause to the Mississippi State Tax Commission in order that a transcript of the testimony before the Commission be made. Implied in petitioner's request is the understanding that the whole matter will again come before the Mississippi Supreme Court for a determination of whether the Mississippi-Alabama State Fair is a community fair within the meaning of Section 9083, Mississippi Code of 1942. Respondent believes that this question is foreclosed by the determination of the Mississippi Court in the subject case.

Respectfully submitted,



JOHN E. STONE
Attorney for Respondent

Of Counsel:

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Jackson, Mississippi

JAMES E. WILLIAMS
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CERTIFICATE

I, John E. Stone, one of the attorneys for Respondent in this cause, certify that I have this day mailed, postage prepaid to Honorable Thomas Y. Minniece, P. O. Box 1563, Meridian, Mississippi, attorney of record for Petitioner, a true copy of the above and foregoing Brief.

This the 26 day of September, 1969.

John E. Stone

JOHN E. STONE
4212 Brookdale
Jackson, Mississippi

Attorney for Respondent

APPENDIX A

Section 9083, Mississippi Code of 1942:

EXEMPTIONS. No tax shall be levied or collected upon any admissions charged at any place of amusement operated solely for the benefit of any religious or charitable organization where the proceeds of such admissions do not inure to any one or more individuals; nor shall such tax apply to admissions charged at any athletic games or contests between high schools or grammar schools; nor to admissions to county, state or community fairs, or entertainments presented in community homes or houses which are publicly owned and controlled, and the proceeds of which do not inure to any individual or individuals. The exemptions allowed in this section shall not apply to athletic games or contests between universities or colleges, nor to amusements in which professional performers or promoters are employed, or compensated out of the proceeds of such admissions received, provided, however, that no tax shall be levied or collected upon any admissions charged for the performance of symphony orchestras, operas, vocal or instrumental artists in which professional or amateur performers are compensated out of the proceeds of such admissions, when sponsored by local music or charity associations or amateur dramatic performances or professional dramatic productions when sponsored by a children's dramatic association, where no dividends are declared, profits received, nor any salary or compensation paid to any of the members of such associations, or to any person for procuring or producing such performance.

APPENDIX B

Section 9080, Mississippi Code of 1942:

ERRORS CORRECTED BY TAX COMMISSION. The Tax Commission shall correct errors in returns, refund as provided in Chapter 127, Laws of 1944 [§9979], or re-assess where errors occur, and upon notice from the Tax Commission the taxpayer shall pay the re-assessment within ten (10) days, and if not then paid the Commission shall declare the tax due, add a penalty of ten per centum (10%) to the amount assessed, give notice of same and if such tax and penalty is not paid to the Commission on or before the tenth (10th) day after mailing such notice, the Commission shall proceed to collect the same as provided in the preceding section hereof. The taxpayer shall have the right of appeal from such assessment as in cases of revocation of permit.

APPENDIX C

Section 9075, Mississippi Code of 1942:

RIGHT OF APPEAL. If upon such hearing the Commission shall decline to rescind its act of revocation of the permit, the person aggrieved may, within ten days of the date of such hearing appeal to the circuit court of the county where such place of amusement was conducted; such appeal shall be taken in the form of objections and exceptions to the order of the Commission, which shall be accompanied by the records of the Commission, and a transcript of the testimony before said Commission, in the case, which shall constitute the record in the circuit court. The appeal shall be granted by the Commission upon the filing of a bond by the appellant, with sufficient sureties in a penal sum sufficient to cover all taxes and penalties in arrear, and all taxes to accrue pending a final hearing and all costs; and the circuit judge shall hear the appeal in vacation on written demand of the party appealing, after the said party shall have given five days notice in writing to all parties concerned.